

**REMARKS**

In the Office Action, claims 14-24 were rejected under 35 U.S.C. §102(e) as being anticipated by Cox et al., U.S. Patent No. 7,130,835.

Withdrawal of the rejections to claims 14-28 is respectfully requested.

**Priority**

The Examiner acknowledged receipt of the priority documents submitted under 35 U.S.C. § 119(a)-(d). This application claims the priority of German priority application DE 102 24 493.6, filed on May 31, 2002. To perfect this priority claim, an English translation of the German priority document together with a statement that the translation is accurate is submitted with this amendment. (Attachment A).

**35 U.S.C. 102(e) date of Cox**

In accordance with MPEP § 706.02(f)(1), Cox et al. is entitled to a 102(e) date “taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 if the prior application(s) properly supports the subject matter used to make the rejection” (emphasis added). Cox et al. claims priority U.S. Provisional Application No. 60/368,643, filed on March 28, 2002.<sup>1</sup> U.S. Provisional Application No. 60/368,643 does not properly support all of the subject matter relied upon to make a *prima facie* anticipation rejection of the pending claims. For example, it does not disclose a pachymetry apparatus, as recited in at least independent claim 25. Thus, Cox et al. is not wholly entitled to a 102(e) date that antedates the foreign priority date of the present application.

**Rejections under 35 U.S.C. §102(e):**

Claims 14-28 were rejected under 35 U.S.C. §102(e) as being anticipated by Cox et al.

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<sup>1</sup> Note that the further priority claim to U.S. Provisional Application No. 60/340,292, filed on Dec. 14, 2001 is improper since it was filed more than one year prior to the filing date of Cox et al.

Cox et al. describes a system and method for predictive ophthalmic correction. Cox et al. teaches using “a graphical user interface (GUI) having a display and a selection device that facilitates the selection of collected information for analysis with optimized historical information.” See; Cox et al. column 5, lines 6-9.

Independent claim 14 recites a method for controlling a device for an ablation of part of a human eye that includes at least the step of “performing a graphic simulation of the ablation in the form of a graphic visualization.” Support for this feature can be found, for example, in the specification at paragraph [0036], which sets forth that “the established and calculated data can be issued on a computer screen in the form of a graphic simulation. The simulation displays the cornea to be treated for example in different colours or similar in top view or in section so that the doctor in attendance can assess the whole procedure in advance.”

The Examiner states that this feature is disclosed in Cox, column 5, lines 4-11. Applicant’s respectfully submit that this section of Cox merely discloses the use of a graphical user interface which “facilitates selection of collected information for analysis” with historical data in a data structure to yield outcome predictive instruction. There is no indication that the graphical user interface of Cox graphically visualizes any data. Moreover, there is no description in Cox of “performing a graphic simulation of the ablation” as recited in claim 14 nor that such simulation is graphically visualized. Accordingly, Cox cannot anticipate claim 14 or its dependent claims 14-23, 26 and 28.

Independent claim 25 recites a device for treating a human eye using laser irradiation, that includes, among other features, “a pachymetry apparatus configured to measure a pachymetry of the eye.”

As set forth above, because a pachymetry apparatus is nowhere disclosed in U.S. Provisional Application No. 60/368,463, Cox cannot be relied on as prior art for that subject matter. Thus, Cox cannot anticipate claim 25 or its dependent claim 27.

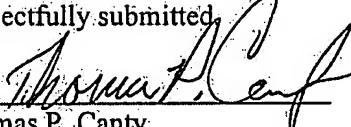
Withdrawal of the rejection under 35 U.S.C. § 102(e) to claims 14-28 is respectfully requested.

CONCLUSION

In view of the above remarks, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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**ATTACHMENT A**